IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 365 OF 2007

WITH

CIVIL APPLICATION NO.1930 OF 2006

Dr. Zakir A.R. Dhange ... Appellant

Vs.

Smt. Prajakati Damodat Patil ... Respondent

Mrs.Shanvari Shailendra, Advocate, i/b. Mr. P.S.Dani,Advocate, for the appellant.

CORAM: J.H.BHATIA,J.

DATE : 20th September, 2007

P.C.

1. Heard. perused the record.

2. The appellant is the original plaintiff. He had filed the suit for specific performance of contract for sale of 10 gunthas of land out of Gat NO.201. According to the plaintiff,this land belonged to one Damodar Patil and Sadanand Aba Patil. However, in the record of

rights, the name of Ramchandra Patil was shown as owner. The plaintiff entered into an agreement for sale of the land with Ramchandra to which Damodar and Sadanand gave their consent in writing. According to him, out of the consideration amount of Rs.10,000/-, he had paid Rs.1500/-as advance and balance was agreed to be paid at the time of execution of the sale deed. He filed the suit for specific performance of the contract against legal representatives of Ramchandra and Damodar as both had died. The defendants Nos. 5 to 7, who are the legal heirs of Damodar, contested the suit by filing written statement. The learned trial Court decreed the suit. The said judgment and decree was challenged in Civil Appeal No.4 of 1999 by the original defendant Nos. 5 to 7. The Appeal was allowed and the decree passed in favour of the plaintiff came to be set aside. Therefore, the plaintiff has come in Second Appeal.

3. The lower appellate Court observed that the plaintiff had not entered into witness box nor he had examined any of the attesting witnesses to the agreement. On his behalf, one Altaf was examined as power of attorney holder. The lower appellate Court found that Altaf does not appear to have any personal knowledge of the transaction. In the present case, it was necessary for the plaintiff to examine himself and also to examine attestesting witnesses, particularly

because, even according to his own pleading, the real owner had not entered into the agreement for sale. The agreement was entered into by one Ramchandra who was not the real owner. If the consent was given by the real owner for that agreement, the question is why the real owner was not made a party to the agreement for sale. This could be explained only by the plaintiff and not his power attorney holder.

4. Taking into consideration the facts and circumstances, I find no fault in the impugned order passed by the lower appellate Court. No substantial question of law is involved in the matter. Therefore, the Appeal stands dismissed.

5. As the Appeal itself is dismissed, the Civil Application does not survive and stands disposed of.

(J.H.BHATIA,J.)